



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable A. C. Winborn
Criminal District Attorney
Houston, Texas

Dear Sir:

Opinion No. 0-7104

Re: Can a clerk employed by a justice of the peace accept a plea of guilty in a criminal case and assess a fine therein, in the absence of the justice of the peace?

We have received your recent inquiry, quoted in part as follows:

"There are some justices of the peace in this county who employ a clerk to take complaints, issue subpoenas, write judgments and perform other clerical duties. The question is: Can these clerks, in the absence of the justice, accept a plea of guilty and assess a fine?"

"Some of these clerks have been pursuing this course, and the first time the Justice of the Peace would know that a fine had been assessed would be when the clerk informed him of it."

The statutes impose such duties on the "justice", "court or jury." See Articles 900-901, Code of Criminal Procedure.

The acceptance of a plea of guilty in a criminal case and the assessment of a fine therein is a judicial act, and, as such, must be performed by the officer or persons designated by law. For a discussion on the non-delegability of judicial powers see enclosed copy of Opinion No. 0-3743.

Therefore, we are constrained to answer the question propounded by you in the negative, i.e., a judgment so rendered by said clerk is void.

We point out that we are not called on here to pass upon the authority of such "clerk" to perform the named clerical duties.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Robert L. Lattimore, Jr.
Assistant Attorney General

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